

DOCKET FILE COPY ORIGINAL

October 5, 2004

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby - TW - A325
Washington, D.C. 20554


2004 OCT 14 P 2:51

Re: Petition for Rule Making
Christine, Texas

Dear Ms. Dortch:

Enclosed is an original and four (4) copies of a
Petition for Rule Making to add Channel 245C3 at Christine,
Texas.

Respectfully submitted,


Katherine Pyeatt
6655 Aintree Circle
Dallas, Texas 75214
(214) 363-6030 Tele

No. of Copies rec'd 074
List ABOVE
MB 04-174

ChristCov

RECEIVED & INSPECTED

OCT 13 2004

FCC - MAILROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of 73.202 (b)) MB Docket No. ____
Table of Allotments)
FM Broadcast Stations)
(Christine, TX)

To: John Karousos, Assistant Chief
Audio Division of the
Media Bureau

PETITION FOR RULE MAKING

Pursuant to 47 C.F.R. 1.401, Katherine Pyeatt
respectfully petitions the FCC to institute a Rule Making
proceeding to amend the FM Table of Allotments to add
Channel 245C3 at Christine, Texas.

DISCUSSION

Petitioner respectfully submits that the public
interest would be served by allocating Channel 245C3 to
Christine, Texas as that community's first aural broadcast
transmission service. Christine is an incorporated city in
Atascosa County Texas with a population of 436.¹ Christine
has its own city hall, mayor and city council. Christine
has a volunteer fire department and its own post office.

¹U.S. Census 2000

Like other "communities" to which the FCC has allotted a local FM service, Christine has several local churches (Catholic, Baptist and Methodist), and commercial businesses (Christine Country Store, Country Cactus Mart, Alice's Kitchen etc.) The economy of Christine is driven by ranching and horse breeding. Christine is a community that is certainly deserving of a local radio station. "Local radio stations play an important role in their communities, providing local news, information and entertainment to residents, and generally serving as good corporate citizens in the local community life. This is particularly true in smaller towns, where the radio stations are limited in number. Yet there are still rural areas of our country that do not have even a local radio station."² The proposed Channel 245C3 will provide additional diversity and an outlet for local self-expression to Christine residents and therefore is in the public interest.

Attached hereto is a channel study confirming that Channel 245C3 can be allocated to Christine, Texas, consistent with the FCC's FM separation rules. See revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992). (See, Attachment A) Note: the petition to

² Statement of Commissioner Kevin J. Martin, MM & O, MM docket 99-240, released May 20, 2004.

add Channel 245C3 at Christine, Texas was dismissed per FCC letter dated September 29, 2004. (See, Attachment B) Also note: the petition to add Channel 245C3 at Tilden, Texas was dismissed per Report & Order, DA 04-914, released April 5, 2004. That action is pending Application for Review which is, however, no impediment to the consideration of the petition to allot Channel 245C3 to Christine, Texas, in accordance with the policy set forth in the Memorandum Opinion and Order in MM Docket No. 01-104 (Auburn, Alabama, et al), that "We...believe that accepting rulemaking proposals that rely upon actions in earlier rulemaking proceedings that are effective but not final will benefit the public." Additionally, please note, the counterproposal to add Channel 245C1 at San Antonio, Texas was dismissed per Report & Order, DA 03-1533, released May 8, 2003. (See, Attachment C) That action was subsequently upheld per the Commission's Memorandum Opinion and Order (released on April 27, 2004). The Commission's decision in MM Docket 00-148 is effective, although not yet final owing to a pending Application for Review.

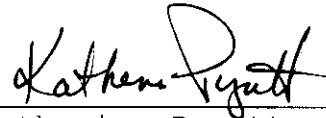
Reference coordinates for Channel 245C3 at Christine, Texas are:

28 40 00 N
98 30 15 W

Should this petition be granted and Channel 245C3 is allotted to Christine, Texas, Petitioner will apply for Channel 245C3 at Christine and after it is authorized, will promptly construct the new facility.

The factual information provided in this Petition for Rule Making is correct and true to the best of my knowledge.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Katherine Pyeatt", is written over a horizontal line.

Katherine Pyeatt
6655 Aintree Circle
Dallas, Texas 75214
(214) 363-6030 Tele

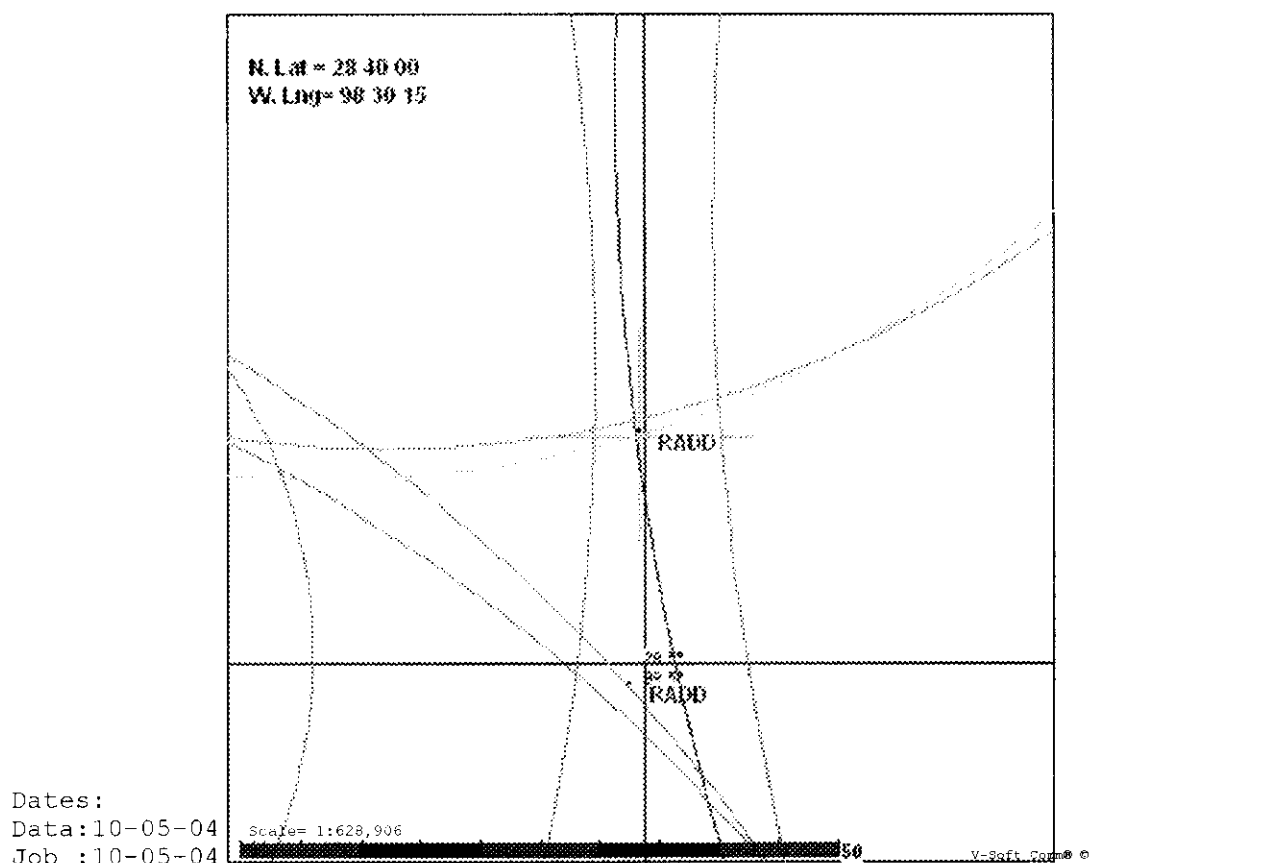
cc: Gene A. Bechtel, Law Office of Gene Bechtel, Suite 600, 1050 17th Street, N.W., Washington, D.C. 20036, telephone (202) 496-1289, fax (301) 762-0156, attorney for Katherine Pyeatt. It is requested that the Commission and any parties who may file pleadings in the captioned matter serve copies to Mr. Bechtel as well as Ms Pyeatt.

October 5, 2004

Christine

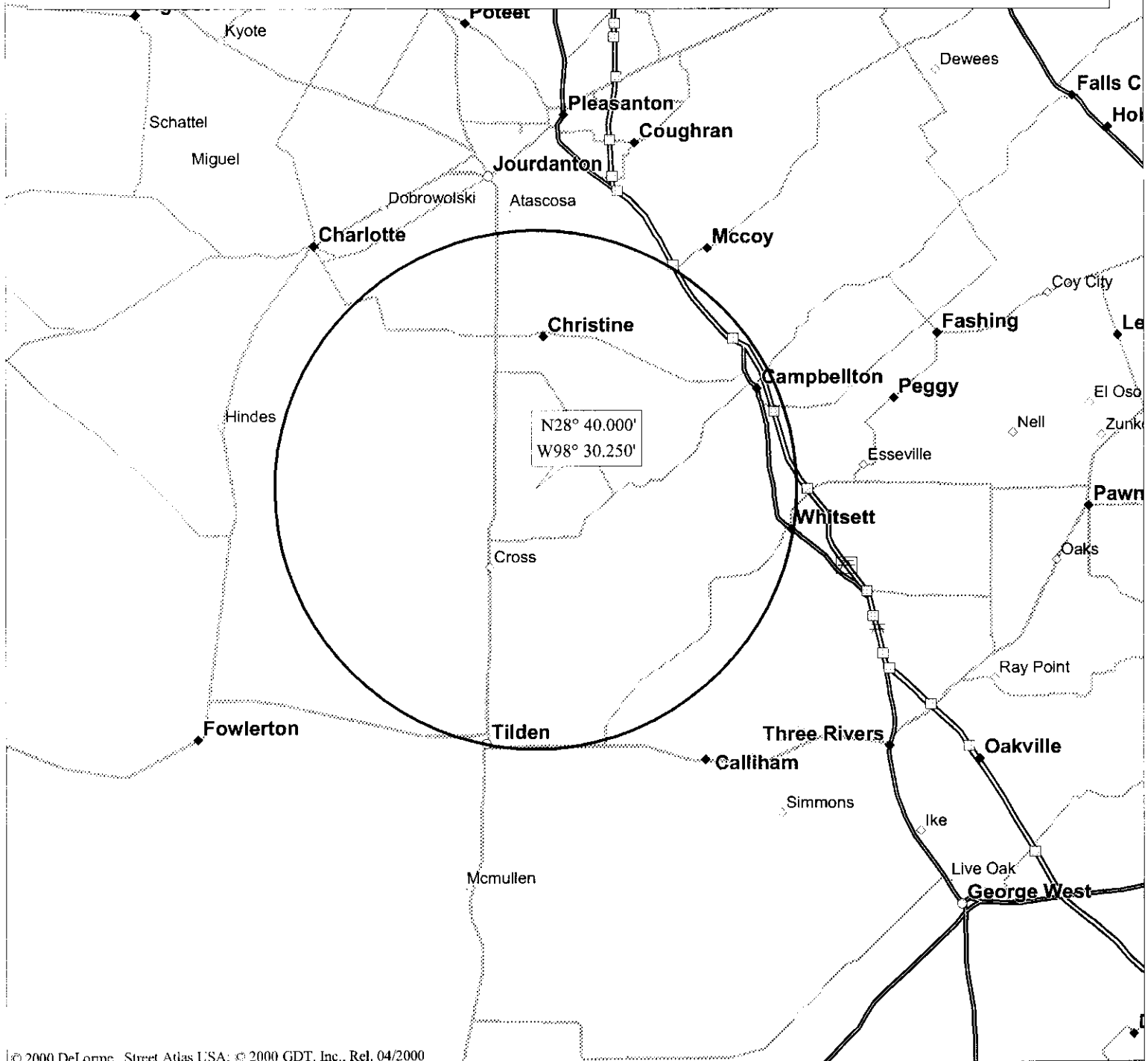
Attachment A

(Channel Study for Channel 245C3 at Christine, Texas)



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
RADD	245C3	ADD	Christine	TX	0.55	2.8	153.0	-152.45
RDEL	245C3	DEL	Tilden	TX	19.93	182.0	153.0	-133.07
RADD	245C3	ADD	Tilden	TX	19.93	182.0	153.0	-133.07
RADD	245C1	ADD	San Antonio	TX	96.16	344.0	211.0	-114.84
KIOXFM	245C1	LIC	El Campo	TX	210.76	82.6	211.0	-0.24
RDEL	247C	DEL	San Antonio	TX	96.16	344.0	96.0	0.16
KAJA	247C*	LIC	San Antonio	TX	97.35	347.4	96.0	1.35
ALLO.	244C		Piedras Negras	CI	196.75	271.8	193.0	3.75
KIOXFC	245C0	CP	El Campo	TX	232.84	85.7	226.0	6.84
ALLO.	246B		Nuevo Laredo	TA	160.12	222.2	145.0	15.12
XHNLOF	246B	OPE	Nuevo Laredo	TA	163.46	217.0	145.0	18.46
AL242	242A	VAC	Cotulla	TX	71.57	255.7	42.0	29.57
KXTNFM	298C0	LIC	San Antonio	TX	71.33	19.0	27.0	44.33
RDEL	244C1	DEL	Georgetown	TX	195.77	20.1	144.0	51.77
KHFIFM	244C1	LIC	Georgetown	TX	195.77	20.1	144.0	51.77
KVMV	245C*	LIC	Mcallen	TX	294.15	166.8	237.0	57.15
KLTG	243C1	LIC-D	Corpus Christi	TX	135.51	139.1	76.0	59.51
KFTX	248C1	LIC-D	Kingsville	TX	135.51	139.1	76.0	59.51
RDEL	244C1	DEL	Georgetown	TX	207.13	16.6	144.0	63.13
VA242	242A	VAC	Yorktown	TX	111.70	67.8	42.0	69.70
RDEL	242A	DEL	Yorktown	TX	111.70	67.8	42.0	69.70

Christine, TX CH 245C3 70 dBu



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Mag 10.00

Tue Oct 05 16:58 2004

Scale 1:500,000 (at center)

10 Miles

10 KM

- Local Road
- Rest Area
- US Highway
- Interstate/Limited Access
- Rest Area with facilities
- Major Connector
- State Route
- Exit

- County Seat
- Small Town
- Locale
- Land
- Water
- River/Canal

Attachment B

(FCC letter returning Petition to add Channel 245C3 at
Christine, Texas)



Federal Communications Commission
Washington, D.C. 20554

September 29, 2004

Katherine Pyeatt
6655 Aintree Circle
Dallas, Texas 75214

Dear Ms. Pyeatt:

This is in response to your petition for rule making proposing the allotment of Channel 245C3 at Christine, Texas, as its first local aural transmission service. To accommodate the proposed Christine allotment, you requested the substitution of Channel 250A for vacant Channel 245C3 at Tilden, Texas; the substitution of Channel 273A for vacant Channel 250A at George West, Texas; the substitution of Channel 232C3 for vacant Channel 273A at San Diego, Texas; the substitution of Channel 280A for vacant Channel 232A at Hebbronville, Texas and the substitution of Channel 292A for vacant Channel 280A at Zapata, Texas.

Your proposal is unacceptable for consideration at this time. Specifically, the proposed Channel 292A at Zapata is short-spaced to Mexican Channel 294A at San Ignac, Tamaulipas. In this regards, Mexican concurrence was objected by the Mexican government because the proposed Zapata substitution does not protect this Mexican allotment.

Based on the above, we are returning your petition for rulemaking proposing the allotment of Channel 245C3 at Christine, Texas.

Sincerely,

A handwritten signature in black ink, which appears to read "John A. Karousos", is written over the typed name and title.

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

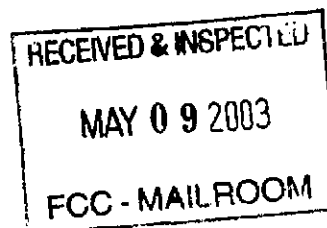
Enclosure

Attachment C

(Report & Order, DA 03-1533, released May 8, 2003)

DOCKET FILE COPY ORIGINAL

MM Docket No. 00-148
RM-9939
RM-10198



Released: May 8, 2003

1. The Audio Division has before it a *Notice of Proposed Rule Making* in the captioned proceeding.¹ Nation Wide Radio Stations filed Comments and Reply Comments. First Broadcasting Company, L.P., Rawhide Radio, L.L.C., Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. ("Joint Parties") filed a Counterproposal and Reply Comments. Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd. filed Joint Reply Comments. Elgin FM Limited Partnership and Charles Crawford ("Elgin-Crawford") jointly filed Reply Comments and Maurice Salsa filed Reply Comments.² For the reasons discussed below, we are dismissing both the initial proposal for Channel 233C3 at Quanah, Texas, and the Counterproposal.

2. At the request of Nation Wide Radio Stations, the *Notice* in this proceeding proposed the allotment of Channel 233C3 to Quanah, Texas.³ In response to the *Notice*, the Joint Parties filed a Counterproposal involving twenty-two communities in Texas and Oklahoma. In one aspect of this Counterproposal, the Joint Parties propose the substitution of Channel 248C for Channel 248C2 at Durant, Oklahoma, reallocation of Channel 248C to Keller, Texas, and modification of the Station KLAQ license to specify operation on Channel 248C at Keller, Texas. In order to accommodate this allotment, the Joint Parties propose three channel substitutions. Included among those substitutions was the

³ Nation Wide Radio Stations has withdrawn its expression of interest in this allotment. In accordance with Section 1.420(j) of the Rules, Nationwide Radio Stations states that neither it nor any of its principals have been paid or promised any consideration for the withdrawal of its expression of interest in the Quanah allotment.

substitution of Channel 230C1 for Channel 248C1 at Archer City, Texas, and the modification of the Station KRZB permit to specify operation on Channel 230C1. On the basis of our own engineering review, Joint Reply Comments filed by Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd., and Reply Comments filed by Maurice Salsa, the proposed transmitter site (33-36-58 and 98-51-42) for the Channel 230C1 allotment at Archer City is short-spaced to a prior-filed application filed by AM & FM Broadcasters, LLC, licensee of Station KICM, Channel 229C2, Krum, Texas, to upgrade to Channel 229C1 (File No. BMPH-20000725AAZ) (the "KICM Class C1 Application").

3. Counterproposals that are in conflict with a previously filed application can be considered if the counterproposal is amended to remove the conflict within 15 days from the date the counterproposal appears on public notice.⁴ The Note also requires a counterproponent to show that it could not have known by exercising due diligence of the pending conflicting FM application. The Joint Parties and AM & FM Broadcasters submitted Reply Comments addressing this issue. Under the agreement, AM & FM Broadcasters agrees to file an application to downgrade Station KICM to Channel 229C2 in the event its application is granted and the Counterproposal is adopted. Pursuant to the agreement, the Joint Parties would "compensate" AM & FM Broadcasters for the downgrade of Station KICM. On August 20, 2001, the staff granted the KICM Class C1 Application.

Discussion

4. We dismiss the Counterproposal because the proposed Archer City Channel 230C1 allotment is short-spaced to the KICM Class C1 construction permit. The Joint Parties have not shown that they could not have known about the then-conflicting KICM Application. Nor have the Joint Parties sought to amend their Counterproposal to protect the proposed Archer City Channel 230C1 allotment.

5. The Commission does not entertain a short-spaced allotment that is contingent on the grant of another application.⁵ This is precisely what the Joint Parties seek. The Archer City allotment is short-spaced to the KICM construction permit and contingent on the staff granting future applications by AM & FM Broadcasters for both a Class C2 construction permit and license. We reject Joint Parties argument that its downgrade proposal complies with the contingent application procedures set forth in Section 73.3517(e) of the Commission's Rules. Section 73.3517(e) permits the simultaneous acceptance of contingent *minor change applications*. It does not authorize the filing of contingent rulemaking petitions. Accordingly, the Counterproposal must be dismissed.

Alternative Proposals

6. The Joint Parties filed an alternative twelve-allotment proposal in anticipation of a staff determination that the Channel 230C1 Archer City allotment is impermissibly short-spaced to the KICM permit. We reject this alternative. A counterproposal must conflict with the proposal set forth in the *Notice*.⁶ In this instance, none of these proposals conflict with Nation Wide Radio Station's initial proposal for a Channel 233C3 allotment at Quanah. As such, we will not bifurcate the Counterproposal or otherwise consider any of these proposals in the context of this proceeding.⁷

⁴ See Note to Section 73.208 of the Rules; see also *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 8 FCC Rcd 4743 (1993).

⁵ See *Oxford and New Albany, Mississippi*, 3 FCC Rcd 615 (MM Bur. 1988), *recon.* 3 FCC Rcd 6626 (MM Bur. 1988); see also *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (MM Bur. 1996).

⁶ See *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931, n. 5 (1990).

⁷ See also *Broken Arrow and Bixby, Oklahoma, Coffeyville, Kansas*, 3 FCC Rcd 6507 (MM Bur. 1988).

7. In the event that its Counterproposal can not be favorably entertained, the Joint Parties advance two alternative proposals. The staff no longer entertains alternative proposals set forth in counterproposals.⁸ In any event, each of these alternatives fails to comply with our rules and procedures. The first proposal involves the proposal to reallocate Channel 248C to Keller, Texas, and modify the Station KLAK license to specify operation on Channel 248C at Keller. A Channel 248C allotment at Keller requires the substitution of Channel 230C1 at Archer City, and thus, cannot be considered. The second alternative only proposes the substitution of Channel 247C1 for Channel 248C at Waco, Texas, reallocation of Channel 247C1 to Lakeway, Texas, and modification of the Station KWTX license to specify operation on Channel 247C1 at Lakeway. The Joint Parties also proposed related channel substitutions necessary to accommodate this reallocation. However, none of these proposed channel substitutions conflict with the underlying Channel 233C3 allotment at Quanah, Texas, proposed in the *Notice*.

8. Accordingly, IT IS ORDERED, That the aforementioned proposal filed by Nation Wide Radio Stations for a Channel 233C3 allotment at Quanah, Texas, IS DISMISSED.

9. IT IS FURTHER ORDERED, That the aforementioned Counterproposal filed by the Joint Parties IS DISMISSED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁸ See *Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 16 FCC Rcd 9551 (MM Bur. 2001).